

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5136 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? :

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PRADIP THAKORBHAI THAKKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5136 of 2002
MR HR PRAJAPATI for Petitioner No. 1
MR HH PATEL Ld. AGP for Respondent No. 1-3
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CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 23/07/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner, Vadodara City dated 24.4.2002 in exercise of powers vested in him by

Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act').

The petitioner has been branded as dangerous person involved in two offences registered with Panigate Police Station and City Police Station, Vadodara. The first offence registered with the Panigate Police Station is an offence punishable under sec. 143, 147, 148, 149, 395, 427, 436, 188 of IPC and under sec. 135 of Bombay Police Act. The incident leading to the offence had occurred on 28.2.2002 at about 10.00 a.m. It is one of the incident of communal conflict which had taken place in the city of Baroda after the Godhra massacre. The second incident had occurred on 10.4.2002 at about 11.45pm for the offence punishable under sec. 143, 147, 148, 326, 504 and 307 of IPC and under sec. 135 of the Bombay Police Act. It is submitted by the ld. counsel for the petitioner that the petitioner has been granted bail in both these offence by the competent court. The petitioner was enlarged on bail on 21.3.2002 for the offence registered with Panigate Police Station concerning past Godhra incident communal riots. There are no criminal antecedents of petitioner under which he can be said to be involved in anti-social activities or activities adverse to the communal harmony in any area. It is pointed out by Mr. Prajapati that the second incident is an individual criminal offence which has no concern with the communal harmony or public tranquility. This incident can be said to be adverse to the maintenance of law and order and not the public order. Both these offences collectively or individually also would not take the petitioner in the category of the dangerous person within the meaning of sec. 2(c) of the PASA Act.

The order of detention has been challenged on number of grounds, however, Mr Prajapati has mainly concentrated his arguments on two grounds. The first point argued by Mr. Prajapati that the order is passed mechanically because the statements of two unnamed witnesses were verified on 23.4.2002 and the order of detention is passed on 24.4.2002. The statements recorded by the sponsoring authority of two unnamed witnesses were recorded on 23.4.2002 and were verified on the same day. This indicates undue haste in passing the order of detention. The second point argued by Mr. Prajapati is that the petitioner was not supplied with three important documents which has resulted into the disability in making effective representation promptly after the execution of the order of detention. It is

pointed out that vide representation dated 10.5.2002 certain documents were demanded by the counsel of the petitioner. On 20.5.2002 the State Government had directed the detaining authority to supply those demanded documents but there was no prompt response from the detaining authority and the documents were supplied vide letter dated 13.6.2002. There is no reasonable or convincing explanation in the affidavit-in-reply filed by the detaining authority.

Of course, ld. AGP Mr Patel has tried to submit that in a sensitive case of communal disturbance, it is always desirable to act promptly and there is no illegal in verifying the statements on the same day on which they are recorded and in passing the order of detention because the detaining authority is supposed to see that the desired person is detained forthwith. But in view of the facts of the present case and the fact that the petitioner was in prison till 21.3.2002, this submission is not acceptable.

The affidavit in reply tendered by the ld. AGP is taken on record today. On careful reading of the affidavit, the Court is satisfied that the delay caused in supplying the three important documents reflected in para-2 of the letter dated 13.6.2002 has not been convincingly explained which goes to the root of the validity of the continued detention. So, on both these grounds, the order of detention and the continued detention suffers from infirmity. Both violates the Constitutional rights guaranteed under Article Article 22(5) of the Constitution of India. So, this petition shall have to be allowed.

In the result, this petition is allowed. The impugned order of detention dated 24.4.2002 passed by the Police Commissioner, Vadodara City is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. Direct service permitted.

(C.K. BUCH, J.)
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